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Environmental Protection

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Environmental Protection

Environmental Protection; limitations on civil actions for nonvehicular pollution control violations

Health and Safety Code §§ 42403.5, 42404.5 (new); § 42407 (amended).

AB 1630 (Campbell); 1987 STAT. Ch. 260

SB 424 (McCorquodale); 1987 STAT. Ch. 107

Under existing law, a person is subject to civil penalties for violations of nonvehicular pollution control regulations.¹ Prior law, however, commenced the limitations period when the offense was committed.² With the enactment of Chapter 260, the period in which to file the action begins to run from the time the violation is discovered or reasonably could have been discovered.³

AH

1. CAL. HEALTH & SAFETY CODE §§ 42401 (intentional or negligent violations of orders of abatement punishable by a fine not to exceed \$25,000 for each day on which the violation occurs), 42402 (intentional or negligent violations of nonvehicular emissions control laws punishable by a fine not to exceed \$1000 for each day the violation occurs), 42402.1 (negligent emission of air contaminants punishable by a fine not to exceed \$10,000 for each day on which the violation occurs), 42402.2 (knowing emission of air contaminants punishable by a fine not to exceed \$10,000 for each day on which the violation occurs). Pursuant to Chapter 107, an idling diesel bus engine is subject to nonvehicular pollution control laws. *Id.* § 42403.5. See also *id.* §§ 42400 (violators of nonvehicular emissions control laws are guilty of a misdemeanor and subject to a fine not to exceed \$1000 or imprisonment up to six months, or both), 42400.1 (persons who negligently exceed air emissions standards are guilty of a misdemeanor and subject to a fine not to exceed \$10,000 or imprisonment up to nine months, or both), 42400.2 (persons who knowingly violate air emissions standards and fail to take corrective action once a violation of emission control laws is discovered, or falsify documents required by nonvehicular pollution control laws, are guilty of a misdemeanor and subject to a fine not to exceed \$25,000 or imprisonment up to one year, or both). See also McMurry & Ramsay, *Environmental Crime: The Use of Criminal Sanctions in Enforcing Environmental Laws*, 19 LOY. L.A. L. REV. 1133 (1986) (discussing the enforcement of federal environmental statutes through criminal prosecution).

2. CAL. CIV. PROC. CODE § 340(1) (actions upon a statute for a penalty or forfeiture must be brought within one year). See also CAL. PENAL CODE § 803(c) (stating that the period of limitations for criminal prosecution of violations of nonvehicular pollution control laws commences when the offense is discovered or reasonably could have been discovered).

3. CAL. HEALTH & SAFETY CODE § 42404.5.

Environmental protection; beverage container recycling

Public Resources Code §§ 14536.1, 14536.2, 14554 (new); §§ 14511.7, 14514.5, 14541, 14550, 14560, 14561, 14571.6, 14571.7, 14571.8, 14572, 14573.5, 14574, 14575, 14581, 14585 (amended).

SB 775 (Dills); 1987 STAT. CH. 240*

AB 20 (Margolin); 1987 STAT. CH. 258*

Chapter 240 effective as of July 23, 1987

Chapter 258 effective as of July 27, 1987*

Existing law establishes California's beverage container¹ recycling program² which includes specific labeling requirements for beverage containers.³ Chapter 258 prohibits the sale of beverage containers which fail to meet the existing labeling requirements.⁴

Prior to the enactment of Chapter 258, any person or specified entity⁵ that collected⁶ empty beverage containers from consumers, but which did not pay redemptions, were designated as dropoff or collection programs.⁷ Chapter 258 adds waste reduction facilities which separate beverage containers from other waste, and which do not pay consumers redemptions, to the existing list of dropoff or collection programs.⁸ Under existing law, processors⁹ must pay a specified amount¹⁰ to recycling centers,¹¹ curbside programs,¹² and

* In order to assure an orderly phase-in of the Act, California Public Resources Code sections 14571.6, 14571.7, 14571.8, 14572, and 14573.5 were operative on October 1, 1987 and California Public Resources Code section 14575 was operative on September 1, 1987.

1. CAL. PUB. RES. CODE § 14505 (definition of beverage container).

2. The California Beverage Container Recycling and Litter Reduction Act was enacted in its entirety in 1986 with the intent of reducing the amount of litter attributable to no-deposit beverage containers. 1986 Cal. Stat. ch. 1290, sec. 2, at _____. The Act is designed to establish a convenient recycling system with minimal redemption values and fees and to allow a reasonable profit for recycling centers. *Id.*

3. CAL. PUB. RES. CODE § 14561. Beverage containers, with the exception of refillable containers, must be printed, embossed, or affixed with a clear and prominent stamp stating: "CA Redemption Value" or "California Redemption Value." *Id.*

4. *Id.* § 14561(d) (exempts refillable containers). Any person convicted of violating any provision of the California Beverage Container Recycling and Litter Reduction Act is guilty of an infraction punishable by a fine of not more than \$100 per day. *Id.* § 14591.

5. *Id.* § 14511.7 (specifies associations, nonprofit corporations, churches, and clubs).

6. *Id.* (with the intent to recycle the containers).

7. *Id.* (definition of dropoff or collection program). The redemption value can be either the redemption value or redemption bonus. *Id.* See *id.* § 14522 (definition of redemption value); *id.* § 14523 (definition of redemption bonus).

8. *Id.* § 14511.7.

9. *Id.* § 14518 (definition of processor).

10. The amount is the sum of the following: (1) The redemption value; (2) the redemption bonus; (3) 1% of the redemption value for administrative costs; and (4) the portion of the

non-profit dropoff programs¹³ for each type of beverage container received by those organizations.¹⁴ Chapter 258 adds dropoff or collection programs to the list of participants paid by processors for beverage containers.¹⁵

Further, existing law authorizes the Department of Conservation (Department) to examine the accounts and records of beverage manufacturers¹⁶ who pay processing fees.¹⁷ Chapter 258 expands the Department's authority to include the examination of the records of any container manufacturer¹⁸ who supplied containers to a beverage manufacturer found to have underpaid the processing fee.¹⁹

Under prior law, distributors²⁰ were required to pay the redemption value²¹ of any beverage container to the Department of Conservation²² within forty days of sale or transfer.²³ Under Chapter 240, distributors must pay the redemption value of every beer and malt beverage container at dates set according to a newly established schedule.²⁴ Finally, Chapter 240 gives distributors of carbonated mineral or soda water the choice of following either the new schedule or the forty day deadline.²⁵

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processing fee for scrap value representing the actual cost and financial return incurred by the recycling center. *Id.* § 14573.5.

11. *Id.* § 14520 (definition of recycling center).

12. *Id.* § 14509.5 (definition of curbside program).

13. *Id.* § 14514.5 (definition of non-profit dropoff program).

14. *Id.* § 14573.5.1 (processors must pay within two working days of the date the beverage container is received or within a time the Department determines is reasonable and adequate).

15. *Id.*

16. *Id.* § 14506 (definition of beverage manufacturer).

17. *Id.* § 14541 (the processing fee is determined pursuant to Health and Safety Code section 14575).

18. *Id.* § 14509 (definition of container manufacturer).

19. *Id.* § 14541(d). Chapter 258 also requires the Department of Conservation to protect any proprietary information obtained while collecting information regarding the potential underpayments of processing fees. *Id.* § 14554. If a beverage manufacturer underpays the processing fee, the Department may assess a penalty of 10% per year plus interest. *Id.* § 14541(d). Additionally, the Department may impose a penalty of 15% of the amount due for payments up to a month late, and an additional 5% for each month of unremitted payments. *Id.*

20. *Id.* § 14511 (definition of distributor).

21. *Id.* The redemption value for the initial period is established as not less than one cent. *Id.* § 14560(a). A graduated schedule is provided for reporting periods up to December 31, 1992. *Id.* § 14560(d). Also included are provisions for adjusting the redemption value if the redemption rate is less than 65% of the beverage containers sold. *Id.* § 14560(b)-(e).

22. The Department of Conservation has the responsibility for the administration of all aspects of the California Beverage Container Recycling and Litter Reduction Act. *Id.* § 14530.

23. 1986 Cal. Stat. ch. 1290, sec. 2, at ____ (enacting CAL. PUB. RES. CODE § 14574).

24. *Id.* § 14574(a) (establishes payment periods at approximately two month intervals).

25. *Id.* § 14574(c).

Environmental Protection; emissions offset credits

Health and Safety Code §§ 41605.5, 42314.5 (amended).
AB 2158 (Condit); 1987 STAT. Ch. 565

Existing law provides emission offset credits¹ for facilities which use agricultural waste products² to produce electrical energy.³ Chapter 565 extends the emission offset credit benefits to those facilities which use agricultural waste products⁴ in cogeneration facilities.⁵ Furthermore, existing law requires districts⁶ to consider the issuance of offset credits when granting certain facility permits.⁷ Chapter 565 adds cogeneration facilities to the existing categories of facilities benefitted by offset credits in permit considerations.⁸

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1. See 42 U.S.C. § 7503 (1977) (the credits allow state planners to offset the increase in pollutants from one source with a decrease in pollutants from another source); see generally Note, 34 SYRACUSE L. REV. 803, 808-11 (1983) (explanation of offset credits and the current application by various state planners).

2. CAL. HEALTH & SAFETY CODE § 41605.5(a) (also includes forest waste products or similar organic wastes).

3. *Id.* § 41605.5(a)-(c). (the waste must be used as biomass fuel in a steam generator or boiler). See 42 U.S.C. §§ 7409-10 (1977) (establishes and imposes federal ambient air quality standards upon the states). See also CAL. HEALTH & SAFETY CODE §§ 41515-41517 (provides the state's legislative intent and policy concerning emission offset credits). Offsets are awarded for the emissions benefits that occur because the waste products are not disposed of by open field burning. *Id.* § 41605.5(a).

4. See *supra* note 2 and accompanying text.

5. CAL. HEALTH & SAFETY CODE § 41605.5 (the waste must be used as digester feedstock). See CAL. PUB. RES. CODE § 25134 (definition of cogeneration). See also *Schwartz v. City of Rosemead*, 155 Cal. App. 3d 547, 550 n.2, 202 Cal. Rptr. 400, 402 n.2 (1984) (judicial support for the policy reasons encouraging cogeneration facilities as a means of air pollution abatement).

6. CAL. HEALTH & SAFETY CODE § 39025 (district means air pollution control district or air quality management district).

7. *Id.* § 42314.5 (the facility must use agricultural, forest or similar organic waste products).

8. *Id.*

Environmental Protection; hazardous chemicals—individual sewage systems

Health and Safety Code § 25210.1 (new).
SB 1246 (Morgan); 1987 STAT. Ch. 874

Existing law regulates the cleaning of privately-owned¹ cesspools, septic tanks, sewage seepage pits, and chemical toilets.² Existing law also prohibits the use of a nonbiodegradable toxic chemical³ in a chemical toilet,⁴ recreational vehicle, or waste facility of a vessel.⁵ Chapter 874 prohibits any person⁶ from using halogenated hydrocarbon chemicals⁷ or aromatic hydrogen chemicals⁸ to clean or unclog a septic tank, cesspool, leachline, or other individual sewage disposal⁹ system.¹⁰

Under existing law, when a nonbiodegradable toxic chemical is sold, the container must not indicate that the chemical may be used in a chemical toilet, recreational vehicle, or waste facility of a vessel.¹¹ Chapter 874 prohibits the sale of any product containing halogenated hydrocarbon chemicals or aromatic hydrocarbon chemicals in a container indicating that the product may be used to clean or unclog a septic tank, cesspool, leachline, or other individual sewage disposal system.¹² Chapter 874 permits the State Department of Health Services to regulate the sale of these products.¹³

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1. CAL. HEALTH & SAFETY CODE § 25000 (these regulations do not apply to sewage disposal systems owned and operated by any government agency or institution).

2. *Id.* §§ 25000-25010.

3. *See* CAL. ADMIN. CODE tit. 22, § 66889 (1979) (criteria for identification of nonbiodegradable toxic chemical substances).

4. *See id.* § 66016 (definition of chemical toilet).

5. CAL. HEALTH & SAFETY CODE § 25210. *See* CAL. HARB. & NAV. CODE § 21 (definition of vessel). *See generally* *Review of Selected 1977 California Legislation*, 9 PAC. L.J. 559 (1978) (discussing safe handling, use, storage, disposal of, and recovery of resources from, hazardous wastes).

6. CAL. HEALTH & SAFETY CODE § 25118 (definition of person).

7. *Id.* § 25210.1(a)(1) (halogenated hydrocarbon chemicals include trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes, and carbon tetrachloride).

8. *Id.* § 25210.1(a)(2) (aromatic hydrogen chemicals include benzene, toluene, and naphthalene).

9. *Id.* § 25113 (definition of disposal).

10. *Id.* § 25210.1(b).

11. *Id.* § 25210.

12. *Id.* § 25210.1(c). *See id.* §§ 25191 (a first offense is punishable by a fine up to \$25,000; a second offense is subject to 16, 20, or 24 months in county jail or a fine of \$2,000 to \$50,000, or both); 25181 (authorizing a city attorney, county district attorney, or attorney general to apply to the superior court for an injunction and order directing compliance).

13. *Id.* § 25210.1(c).

Environmental Protection; hazardous substances—liability of owners and occupiers of land

Health and Safety Code §§ 25323.5, 25359.7 (new); §§ 25315, 25358.3, 25359, 25363 (amended).

SB 245 (Torres); 1987 STAT. Ch. 1302

Existing law permits funds from the Hazardous Substance Account¹ and Hazardous Substance Clearing Account² to be used to pay for all costs of removal³ and remedial⁴ action taken by state or local governments in response to releases⁵ of hazardous substances.⁶ The Attorney General must recover these costs from liable persons upon the request of the Department of Health Services (DHS).⁷ Chapter 1302 brings California into conformity with federal standards and defines a responsible party or liable party as any of the following: (1) An owner and operator of a vessel or a facility;⁸ (2) any person who was an owner or operator of a hazardous substances disposal site at the time the substance was disposed;⁹ (3) intermediaries, owners, or custodians of hazardous substances, who arrange for disposal, treatment, or transportation of hazardous substances at any facility or incinerator vessel which contains hazardous substances owned or operated by another party or entity;¹⁰ or (4) a person who accepts or has accepted any hazardous substance for transportation to a disposal or treatment facility, or an incineration vessel or site, from which there is a release or threatened release that caused the incurrence of response costs.¹¹

Existing law requires costs and expenses recoverable under the Hazardous Substance Account and the Hazardous Substance Clearing

1. See CAL. HEALTH & SAFETY CODE § 25330.

2. See *id.* § 25334.

3. See *id.* § 25323 (definition of removal).

4. See *id.* § 25322 (definition of remedial action).

5. See *id.* §§ 25320 (actions included in the definition of release), 25321 (actions excluded from the definition of release).

6. *Id.* §§ 25351, 25385. See *id.* §§ 25316 (definition of hazardous substance), 25317 (substances excluded from definition of hazardous substance).

7. *Id.* § 25360.

8. See 42 U.S.C. § 9607(a)(1) (1986) (owner or operator of a vessel or facility).

9. See *id.* § 9607(a)(2) (owner or operator of a hazardous substance disposal facility).

10. See *id.* § 9607(a)(3) (intermediaries, owners, or custodians of hazardous wastes who arrange for the handling of hazardous substances at a facility or incinerator vessel owned by another).

11. CAL. HEALTH & SAFETY CODE § 25323.5(a). See 42 U.S.C. § 9607(a)(4) (transportation of hazardous substances).

Fund to be retrieved under a standard of strict liability.¹² Chapter 1302 establishes defenses for a party who can show by the preponderance of the evidence that the release or threatened release was caused solely by: (1) An act of God, (2) an act of war, (3) an act or omission of a third party,¹³ or (4) any combination of the three.¹⁴

Existing law allows the Director of DHS (Director) to order any responsible party or parties to take necessary removal or remedial action to protect public health and safety and the environment whenever an imminent or substantial endangerment to the public health and safety or the environment occurs because of a release or threatened release of a hazardous substance.¹⁵ Chapter 1302 prevents such an order from being made solely on the basis of ownership of real property as specified in the definition of a responsible party.¹⁶

Under existing law, a liable party for the release or threatened release of a hazardous substance, who fails without sufficient cause to take proper remedial or removal action as ordered by the Director or pursuant to a court order, will be liable for punitive damages.¹⁷ Chapter 1302 excludes from punitive damages those real property owners who do not generate, treat, transport, store, or dispose of any hazardous substance on, in, or at the facility located on the real property in question.¹⁸ In addition, though the standard of recovery is on a strict liability basis, a liable party may seek contribution or indemnity from any others found liable, if the liable party did not generate, treat, transport, store, or dispose of a hazardous substance.¹⁹ With the enactment of Chapter 1302, an owner of nonresidential real property has a duty to give notice prior to the sale of the property if the owner knows or has reason to know that a

12. CAL. HEALTH & SAFETY CODE § 25363(d).

13. Acts or omissions by the defendant's employees or agents, as well as those by persons whose acts or omissions occur in connection with a direct or indirect contractual relationship, will not relieve the party of liability. 42 U.S.C. § 9607(b). For all other third parties, the defendant must establish by the preponderance of the evidence that (1) the defendant exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of the hazardous substance, in light of all relevant facts and circumstances; and (2) the defendant took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions. *Id.* § 9607(b)(3)(a), (b). See 42 U.S.C. §§ 9601(35)(A) (definition of contractual relationship), 9601(35)(B) (evidentiary requirements for establishing contractual relationship).

14. CAL. HEALTH & SAFETY CODE § 25323.5(b).

15. *Id.* § 25358(a).

16. *Id.* § 25358(a)(1).

17. *Id.* § 25359(a). A court will determine the sufficiency of the cause. *Id.* The damages may be for up to three times the costs incurred by the state. *Id.*

18. *Id.* § 25359(b).

19. *Id.* § 25363(e).

hazardous substance has been released on or beneath the property.²⁰ Failure to provide this notice will subject the violator to actual damages, any other remedies available by law, and in the case of an owner who has actual knowledge of the condition and knowingly and willfully fails to give written notice to the buyer, the person will be liable for civil penalties.²¹ A lessee or renter of real property who knows or has reasonable cause to know that a hazardous substance is present on or beneath the real property must give written notice to the owner upon the discovery of the presence or suspected presence of the hazardous substance.²² Failure to provide notice gives the owner the option of voiding the leasehold or the rental agreement.²³

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20. *Id.* § 25359.7(a). *Compare id.* (nonresidential real property owner's duty to give notice of presence of hazardous substances to subsequent purchaser) with Restatement (Second) of Torts § 373 (1965) (vendor who created or negligently permitted dangerous conditions on land prior to sale is liable for physical harm caused by those conditions after vendee takes possession of the land).

21. CAL. HEALTH & SAFETY CODE § 25359.7(a) (the civil penalty may be up to \$5,000 for each violation).

22. *Id.* § 25359.7(b).

23. *Id.* § 25359.7(b)(1). The option to void does not apply if the property is used exclusively for residential purposes. *Id.* If the lessee or the renter has actual knowledge of the presence of hazardous substances and knowingly and willfully fails to provide the notice, he or she will be subject to civil penalties of up to \$5,000. *Id.* § 25359.7(b)(2).

Environmental Protection; hazardous waste—land treatment units

Health and Safety Code §§ 25209, 25209.1, 25209.2, 25209.3, 25209.4, 25209.5, 25209.6, 25209.7 (new).

AB 1723 (Katz); 1987 STAT. CH. 1374

Existing law requires that specified statutes and regulations be followed before disposing¹ of hazardous waste.² With the enactment of Chapter 1374, the legislature intends to establish a uniform and

1. CAL. HEALTH & SAFETY CODE § 25123 (definition of disposal).

2. *Id.* §§ 25100-25249 (hazardous waste control regulations). *See id.* § 25117 (definition of hazardous waste). *See generally* Review of Selected 1987 California Legislation, 18 PAC. L.J. 433, 631 (1986) (Hazardous Waste Management Act of 1986).

workable procedure for implementing requirements for liner and leachate³ collection and removal systems in all existing land treatment units,⁴ and replacements and lateral expansions of existing and new land treatment units.⁵ The legislature further intends to ensure that the vadose zone⁶ and groundwater beneath all land treatment units is adequately monitored to detect the presence of any contamination.⁷ Chapter 1374 prohibits any person from discharging⁸ hazardous waste into a new land treatment unit at a new or existing facility,⁹ any land treatment unit¹⁰ that replaces an existing land treatment unit, or any laterally expanded portion of an existing land treatment unit that has not been equipped with liners, a leachate collection and removal system, and a groundwater monitoring system.¹¹ Chapter 1374 also prohibits any person from placing or disposing hazardous waste in a land treatment unit if: (1) Hazardous waste constituents¹² have migrated from the land treatment unit into the vadose zone beneath or surrounding the treatment zone¹³ or in the waters beneath the treatment zone in concentrations that pollute¹⁴ or threaten to pollute the vadose zone or the waters of California; (2) there is evidence that a hazardous constituent in the waste discharged to the

3. CAL. HEALTH & SAFETY CODE § 25179.3(i) (definition of leachate).

4. *Id.* § 25209.1(e) (definition of land treatment unit).

5. *Id.* § 25209(c).

6. *Id.* § 25209.1(i) (definition of vadose zone). For purposes of this article, the vadose zone does not include the treatment zone. *Id.* See *id.* § 25209.1(h) (definition of treatment zone).

7. *Id.* § 25209(c).

8. *Id.* § 25209.1(b) (definition of discharge).

9. *Id.* § 25209.1(c) (definition of facility).

10. *Id.* § 25209.1(e) (definition of land treatment unit).

11. *Id.* § 25209.2(a). A variance, or renewal of a variance, may be issued for a period not to exceed three years. *Id.* A variance may only be issued when the owner or operator can demonstrate, and the Department finds (1) if an existing land treatment unit, that no hazardous waste constituents have migrated from the treatment zone into the vadose zone or into the waters of California in concentrations that pollute or threaten to pollute the vadose zone or the waters of California; (2) that the design and operating practices will prevent the migration of hazardous waste constituents into the vadose zone or into the water of California in concentrations that pollute or threaten to pollute the vadose zone or the waters of California; and (3) the design and operating practices provide for rapid detection and removal or remediation of any hazardous waste constituents that migrate from the treatment zone into the vadose zone or into the waters of California in concentrations that pollute or threaten to pollute the vadose zone or the water of California. *Id.* The liner, leachate collection, and groundwater monitoring systems must be designed, constructed, and operated according to State Department of Health Services (Department) and the State Water Resources Control Board (Board) regulations and standards for Class I landfills. *Id.* § 25209.5; see also *id.* § 25209.3 (prohibits discharging hazardous waste into an unequipped land treatment unit after January 1, 1990).

12. *Id.* § 25209.1(a) (definition of constituent).

13. *Id.* § 25209.1(h) (definition of treatment zone).

14. *Id.* § 25209.1(f) (definition of pollution).

land treatment unit has not or will not be completely degraded, transformed, or immobilized in the treatment zone; or (3) the land treatment unit is not equipped with liners, leachate collection and removal systems, and a groundwater monitoring system that satisfies specific requirements¹⁵ and there is a significant potential for hazardous waste constituents to migrate from the land treatment unit into a potential source of drinking water.¹⁶ Furthermore, Chapter 1374 provides that land treatment of contaminated soil resulting from a removal and remedial action at any hazardous substance release site is exempt from this prohibition if the land treatment (1) does not pose a threat to public health, or safety or the environment; (2) is conducted pursuant to a remedial action plan approved by the State Department of Health Services, or a cleanup and abatement order issued by a regional water quality control board; (3) is not conducted at an offsite commercial hazardous waste facility; and (4) is used only for purposes of removal and remedial action, and upon completion of the land treatment portion of the removal and remedial action, the land treatment unit is closed.¹⁷

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15. *See id.* § 25209.5.

16. *Id.* § 25209.4(a)(1)-(3). *See id.* § 25209.1(f) (definition of potential source of drinking water). The owner or operator of the land treatment unit must submit information to the Department at least annually to assure that neither of the two conditions provided in California Health and Safety Code section 25209.4(a)(1), (2) are present. *Id.* § 25209.4(b)(1). Within 72 hours of detecting and confirming the existence of either of these two conditions, or the presence of factors that render the owner or operator unable to continue to satisfy the variance requirements under California Health and Safety Code section 25209.2(b), the owner or operator must report to the Department and describe the findings in full. *Id.* § 25209.4(b)(2).

17. *Id.* § 25209.6(a)-(d).